

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

KDI TECHNOLOGIES CO., d/b/a
DIANETICS¹

Employer

and

CASE GR-7-RC-21618

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW), AFL-CIO²

Petitioner

APPEARANCES:

Kevin Krauss, Attorney, of Grand Rapids, Michigan, for the Employer.
Kenneth Bieber, of Grand Rapids, Michigan, for the Petitioner.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record³ in this proceeding, the undersigned finds:

¹ The name of the Employer appears as corrected at the hearing.

² The name of the Petitioner appears as corrected at the hearing.

³ The Petitioner filed a brief in this matter, which has been carefully considered.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

The parties stipulated that the appropriate unit is all full-time and regular part-time production and maintenance employees employed by the Employer at its 2206 Pineridge Road, Jenison, Michigan facility; but excluding all office clerical employees, guards and supervisors as defined in the Act. The only issue in dispute is the unit placement of seven lead employees.⁴ The Employer contends that they are supervisors within the meaning of the Act and should be excluded from the unit. The Petitioner maintains that the lead employees are not supervisors and should be included in the unit.

The Employer is engaged in the dual operation of die making and die cutting for the automotive and other industries. The Employer's sole facility is located in Jenison, Michigan. The Employer utilizes three different types of presses in its production process: automatic presses, incremental presses and planten presses. The Employer ships about 85 percent of its finished dies directly to its customers. The remainder are kept in-house and sent to the production and maintenance employees in press operations for the making of a variety of parts, such as fasteners and foam parts for the automotive industry, office furniture parts and pipe wraps for the plumbing industry. The shipping/receiving department then ships these finished parts directly to the Employer's customers.

The Employer's operations are headed by Owner-Chief Executive Officer, Bruce Kroskopf. Reporting directly to Kroskopf is President Ron Urbanski. Reporting directly to Urbanski is Human Resources Director-Controller-Chief Financial Officer Norma McDonald; Operations Manager Brian Wieck; Materials Manager John Van Vossen; Purchasing Manager

⁴ Initially the Employer contended that material coordinator/expeditor, William Osborn, was also a lead employee and supervisor within the meaning of the Act. However, the parties later stipulated that Osborn is not a supervisor within the meaning of the Act and is an eligible voter.

John Reid; Engineering Manager Mark Brower; Sales Manager David Gibbs; Maintenance Manager Tom Bruinsslot; and Quality Assurance Manager Dick Anderson.⁵

The production portion of the plant is divided into five main areas: die making area; die cutting/press area; stripping area; shipping/receiving area; and Onstar assembly area. Lead employee Mark VanSoest works in the die making area; lead employees Mike Johnson, Tony Overholt, Bob Wojcik and Emilio Martinez work in the die cutting/press area;⁶ lead employee Eric Aldrich works in the stripping and shipping/receiving area; and lead employee Sherry Wright works in the Onstar assembly area⁷. All of the lead employees except for Aldrich report directly to Operations Manager Wieck. Aldrich reports directly to Materials Manager VanVossen.

In addition to the lead employees, there are approximately 25 production employees. Three full-time and/or regular part-time die makers work with lead employee VanSoest in the die making area; two press operators work with Johnson; four press operators work with Overholt; two press operators work with Wojcik; two press operators work with Martinez; eight stripping/packaging and shipping/receiving employees work with Aldrich; and two assembly employees work with Wright. In addition to these employees, the Employer utilizes temporary production and maintenance employees through an employment agency.⁸ Each area other than the die making area utilizes about one to three temporary employees. The die making area does not use temporary employees.

Except for lead employee Wojcik, all lead and production employees are paid on an hourly basis.⁹ The lead employees earn from about \$1.00 to \$7.00 more per hour than the

⁵ The parties stipulated that McDonald, VanVossen, Reid, Brower, Gibbs, Bruinsslot and Anderson are supervisory and/or managerial employees within the meaning of the Act and are not eligible voters. Although the parties did not stipulate regarding the supervisory/managerial status of Kroskopf, Urbanski or Wieck, the record is clear that they are also supervisory and/or managerial employees within the meaning of the Act.

⁶ Johnson works with the preco press operators; Overholt works with the automatic press operators; Wojcik works with the planten press operators; and Martinez works with the second shift press operators.

⁷ The Onstar assembly line involves the manufacturing of car consoles for General Motors Corporation. This operation is not constant and is based on customer need. In 1999, the line has been up and running for a total of only about 1 ½ months. When the Onstar assembly line is shut down, the lead employee and two assembly employees are transferred to a different production area and all three employees work as production employees.

⁸ The parties stipulated that the temporary service employees utilized by the Employer are not eligible to vote in the election.

⁹ Wojcik was previously moved out of the production area for about 1½ years to assist the sales department and Operations Manager Wieck. At that time, Wojcik became a salaried employee and when he returned to the production floor he continued to be a salaried employee and currently earns a salary of \$700.00 weekly.

production employees in their group.¹⁰ Specifically, lead employees earn between \$11.00 and \$17.01 per hour and production employees earn between \$6.24 and \$16.15 per hour. When a production employee is selected as a lead employee, he/she generally receives a \$0.50 to a \$1.00 per hour raise for a period of 90 days while in training and another \$0.50 to \$1.00 per hour raise upon successfully completing the training period and becoming a lead employee. Any additional raises are determined based upon annual performance reviews completed by Operations Manager Wieck for all lead employees. Martinez, Wojcik, Aldrich and Wright have the most seniority in their groups; Johnson and Overholt have the second highest seniority; and VanSoest has the third highest seniority. The lead employees receive no additional benefits compared to the other production employees.

Operations Manager Wieck has an office away from and outside of the view of the production floor. Aldrich utilizes an office for performing routine paper work, which is also utilized by both quality assurance employees and production employees. Overholt, Wojcik and VanSoest each have a desk located in their respective areas. Johnson, Martinez and Wright do not have any office or desk area. All lead employees possess a key to the production area of the facility and frequently open the plant in the morning.¹¹ Second shift lead employee Martinez routinely locks the facility at the conclusion of the second shift. Lead employees and other production employees swipe electronic time cards for timekeeping purposes. Lead employees review and initial production employee time cards verifying hours worked. If there is any dispute as to the accuracy of the time card, the operations manager resolves the dispute. All personnel files are kept in the human resources department.

The production schedules are made out by the operations manager in conjunction with the materials manager and production manager. The production schedule determines what products are to be manufactured at any given time and the necessary materials. The schedule is posted on the Communications board in the production room and the lead employees assign jobs to the production employees in their group based on the production schedule. The operations manager resolves any problems, such as insufficient material or equipment break down, regarding completion of a job listed on the production schedule. If the operations manager is absent from the plant, the lead employees are instructed to report any problems to human resources or the president. The lead employees are responsible for setting up the line to correctly run the product and assigning the production employees their job tasks. The record indicates that all the production employees are capable of performing any of the jobs assigned to their group. The jobs are assigned based on what needs to be done and the experience of the production employees, but the lead employees are also responsive to the desires of the

¹⁰ Lead employee Johnson actually earns a lower hourly wage than one of the press operators in his group, Raymond VandPanne. However, VandePanne was formerly the lead employee on second shift who desired to work on the first shift and was replaced by lead employee Martinez without suffering a loss of pay.

¹¹ Lead employees do not possess other keys to the rest of the Employer's facility, which are possessed by all management personnel.

employees and their seniority. While breaks and lunch times are pre-scheduled, it is sometimes necessary to depart from the schedule due to the exigencies of the production process. The production employees will generally know when they can and cannot take a break or lunch based on the production flow, although it is ultimately the responsibility of the lead employees to assure the least disruption.

The lead employees spend about 70 to 90 percent of their time performing the same types of work as the production employees. Commensurate with their greater experience, lead employees perform other tasks such as equipment set-up, quality control, problem solving and utility and maintenance duties. The lead employees are also responsible for the training of new employees. The operations manager also spends time in the production areas, performing three to five daily walk-throughs. In doing so, he at times engages in troubleshooting or training.

While the lead employees can make recommendations regarding the necessity of overtime, the final decision to schedule overtime is made by the operations manager. Once the decision is made to schedule overtime, the lead employees decide which employees in their group will work it. However, overtime is voluntary, and a lead employee cannot require a production employee to work it. Generally, the lead employee determines who can work overtime based on the job being worked on and the experience of the production employee.

The production department operates two eight-hour shifts, 7:00 a.m. to 3:30 p.m. and 3:30 p.m. to 11:30 p.m. All stipulated supervisory personnel work during the first shift and leave about 5:00 p.m. All the lead employees except for Martinez also work the first shift. After 5:00 p.m., Martinez is the most experienced employee present at the facility. However, the operations manager, or some other management official in his absence, is always available by phone and Martinez is instructed to contact management at any time when necessary. The record indicates that Martinez has contacted Operations Manager Wieck at home during the evening on a number of occasions to report problems or changes made to the production schedule during the second shift.

Any scheduled staff meetings are attended by both the lead and production employees. In addition, monthly lead meetings are held and are attended by the operations manager and all lead employees. The discussions at these meetings revolve around upcoming production schedules and any production-related problems. The Employer also holds regular two-hour upper management meetings in which one lead employee per meeting is invited to attend for 15 to 30 minutes. During this time, the team leader in attendance addresses specific production issues related to his/her production group and is not present during any confidential management discussions relating to topics such as upcoming job bids, sales and quoting information, financial reports and human resource issues.

The lead employees do not possess any authority to hire, fire, suspend, promote, lay off or recall employees. The lead employees are expected to notify the operations manager of anything significant that occurs on their shift of both a production and personnel nature. With

respect to production employees leaving early or taking time off, the weight of the evidence is that while the lead employee may, on occasion, initially approve such requests for time off, the operations manager must be notified of all such occurrences and has the final approval. The lead employees monitor the work performance of the temporary employees in their group and make recommendations to the operations manager regarding their hire as a permanent employee or discharge after 90 days. However, the weight of the evidence is that the operations manager decides whether to retain or terminate a temporary employee.

The Employer contends that lead employees have the authority to send a production employee home. Yet, they have rarely done so and the weight of evidence suggests they have not done so without contacting and gaining the approval of higher management. Although the Employer contends that lead employees have the authority to issue reprimands on their own, there is no record evidence that they have ever done so. Indeed, on one occasion, a lead employee filled out a written reprimand after being directed to do so by the operations manager and the operations manager was present when the reprimand was delivered to the production employee. Rather, the record indicates that the lead employees report infractions or problems involving the production employees to the operations manager, who then decides what, if any, discipline will issue. The lead employee may or may not recommend discipline, but the final decision is made by the operations manager. In addition, the lead employees do not have access to employee personnel files which must be requested from human resources. The record indicates that no lead employees have ever requested any employee personnel files from human resources.

Production employees are evaluated annually. The evaluation procedure involves the lead employee obtaining an evaluation form from the operations manager. The lead employee then rates the production employee according to the numerical ratings noted on the form and submits the form to the operations manager. The operations manager then schedules an evaluation meeting with both the lead and production employee. During this meeting, the lead employee gives his/her opinion of the production employee and discusses the numerical ratings given to the employee and why such numbers were given. Although it has not happened very often, the record is clear that the operations manager may dispute the leader's rating numbers and makes the final determination as to the overall rating. A final numerical rating is determined based on the numbers noted on the form and the amount of the employee's raise is determined based on the final number. The lead employees do not have the authority to vary from the system noted on the form. The same evaluation forms are used by the operations manager to evaluate the lead employees. The record demonstrates that the production employees receive ratings of either "very good" or "outstanding" and raises between four percent and six percent, with the majority receiving five percent raises, about the same percentage as the lead employees.

In order to find an individual to be a supervisor, the individual must not only possess one of the supervisory indicia set forth in Section 2(11) of the Act, but such authority must also entail the exercise of independent judgment. In enacting Section 2(11) of the Act, Congress

stressed that only persons vested with “genuine management prerogatives” should be considered supervisors, as opposed to “straw bosses, lead men,...and other minor supervisory employees”. *Chicago Metallic Corp.*, 273 NLRB 1677, 1688 (1985). Furthermore, the burden of finding supervisory status rests with the party asserting the same. *Clark Machine Corp.*, 308 NLRB 555 (1992).

The Employer contends that the lead employees are supervisory because they possess the authority to assign and direct employee work, initiate disciplinary action and evaluate employees. With respect to the assignment and direction of work, if the assignment or direction of other employees is merely routine, clerical or perfunctory in nature, it is not sufficient to confer supervisory status. *Somerset Welding & Steel, Inc.*, 291 NLRB 913 (1988); *Bowne of Houston, Inc.*, 280 NLRB 1222, 1223 (1986). The lead employees at issue act mainly as conduits between management and the production employees. They are primarily responsible for assuring that the work of the plant is completed properly and on schedule. However, such responsibility is not, of itself, sufficient to confer supervisory status. *Hydro Conduit Corp.*, 254 NLRB 433, 438 (1981). The lead employees engage in routine direction which requires no independent judgment. The production schedules provided by management determine when and what products are to be manufactured. The general job tasks required for production are constant. While the record is silent as to the degree of skill needed to perform the jobs, the production employees are rotated among them such that it appears they are all capable of performing various tasks. The lead employees’ assignment of tasks to the production employees exhibits no more than the knowledge of an individual with experience regarding which employees can most competently and efficiently perform particular jobs. *Quadrex Environmental Co.*, 308 NLRB 101 (1992); *Clark Machine Corp.*, 308 NLRB 555, 555-556 (1992).

The coordination of breaks and lunch do not require any independent judgment because they are determined by the production flow and the employees generally use their own initiative to avoid any disruption. Nor do the lead employees exercise independent judgment to call in employees to fill an absence or for overtime or to call the temporary service agency for temporary employees since the record clearly indicates that such decisions are initiated by the operations manager.

As to whether the lead employees possess the authority to independently discipline and evaluate employees, or to effectively recommend such action, I find that the lead employees do not possess such independent authority, but rather perform only a reporting function for management which decides what, if any, action should appropriately be taken. Their involvement in such matters is more akin to an administrative function of documenting employee performance without having any real impact on the eventual action to be taken with regard to employee terms and conditions of employment. *Passavant Health Center*, 284 NLRB 887, 889 (1987). The lead employees merely report infractions or incidents and the operations manager determines whether discipline will issue and to what degree. While the lead employees may at times recommend discipline, there is no record evidence that the

operations manager routinely follows such recommendations. Thus, the Employer's contention that the lead employees possess the authority to issue oral or written reprimands is not established by the weight of the evidence. Even assuming such authority exists, the lead employees have never independently exercised such authority, nor is there any evidence that such reprimands, even if given, would have an adverse effect on an employees' job status or tenure. ***S.S. Joachim & Anne Residence***, 314 NLRB 1191, 1195 (1994). Similarly, the evidence fails to support the Employer's assertion that the leads have the independent authority to send employees home for disciplinary reasons without first gaining approval from management. In fact, there is no evidence the lead employees have ever sent employees home.

With regard to employee evaluations, the operations manager, who has substantial opportunity to observe the production employees, has veto power over the comments and rating provided by the lead employees. Even though the numerical ratings given to production employees in evaluations are directly correlated with specific wage increases, the evaluations are done with clear participation and review by upper management. The Board has held that for a supervisor to "effectively recommend", the recommendation must be implemented without review by superiors. The fact that the recommendation is ultimately effectuated is irrelevant. ***The Tiberti Fence Co.***, 326 NLRB No. 56 slip op at 1, 3 (August 28, 1998). Likewise, with respect to the wage increases for production employees which are based on numerically rated performance evaluations completed by the lead employees, I find that the lead employees do not have the authority to determine and effectuate an ultimate personnel decision where recommendations on wage increases are not implemented without review or question and require the approval of the operations manager. ***Id.***; ***Hillhaven Rehabilitation Center***, 325 NLRB No. 9 slip op. at 2 (November 9, 1997). Further, it is significant that the record establishes that both the ratings and the wage increases are within a narrow ban.

The Employer also relies on several secondary indicia of supervisory status. However, the existence of secondary indicia of supervisory status such as the possession of keys, title, higher pay, and the like are, standing alone, insufficient to demonstrate supervisory status. ***Shen Automotive Dealership Group***, 321 NLRB 586, 594 (1996); ***Billows Electric Supply***, 311 NLRB 878 fn. 2 (1993). The fact that the lead employees train new employees does not confer supervisory status. The training does not involve the exercise of independent judgment, but is merely the authority of more skilled and experienced employees over unskilled and inexperienced employees. ***First Western Building Services, Inc.***, 309 NLRB 591, 601 (1992). The absence of statutory supervisors at the facility during the second shift and some overtime weekend hours also does not require a finding of supervisory status of the lead employees when management personnel are available at all hours by telephone to give direction and make decisions. ***Id.***, at 603. The initialing of time records of the production employees is of a clerical nature particularly in light of the fact that any dispute regarding time worked is resolved by the operations manager. With respect to the attendance of the lead employees at monthly lead meetings, there is no indication that personnel matters are discussed at these meetings and such attendance is not an indicator of supervisory status. ***Auto West Toyota***, 284 NLRB 659, 661 (1987); ***Hydro Conduit Corp.***, 254 NLRB 433, 441 (1981). Finally, if the

lead employees are found to be supervisors, there would be a high ratio of one supervisor for approximately every five production employees, including temporary employees, in an operation that is specific and routine and where the managers are present and accessible. *Airkaman, Inc.*, 230 NLRB 924, 926 (1977).

Accordingly, I conclude the lead employees are not supervisors within the meaning of Section 2(11) of the Act, and thus are appropriately included in the unit and eligible to vote in the election herein.

5. For the above reasons, and based on the record as a whole, the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees employed by the Employer at its 2206 Pineridge Road, Jenison, Michigan facility; but excluding all office clerical employees, guards and supervisors as defined in the Act.

Those eligible shall vote as set forth in the attached Direction of Election.

Dated at Detroit, Michigan, this 10th day of September, 1999.

(SEAL)

/s/ Stephen M. Glasser
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